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Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo

Addendum

Further to my reports of 16 September 1999, 23 December 1999, 3 March 2000, 6 June 2000, 18 September 2000, 15 December 2000, 13 March 2001 and 2 October 2001 (S/1999/987 and Add.1, S/1999/1250 and Add.1, S/2000/177 and Add.1-3, S/2000/538 and Add.1, S/2000/878 and Add.1, S/2000/1196 and Add.1, S/2001/218 and Add.1 and S/2001/926), the texts of regulations 2001/23 and 2001/24 issued by my Special Representative are attached herewith for the information of the members of the Security Council.

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REGULATION NO. 2001/23

ON THE PILOT PROGRAM FOR IMPOSITION OF TAXES ON IMMOVABLE PROPERTY IN KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo and UNMIK Regulation No. 1999/16 of 6 November 1999, as amended, on the Establishment of the Central Fiscal Authority of Kosovo and Other Related Matters,

With a view to enhancing the economic development of municipalities in Kosovo through the imposition of municipal taxes on immovable property as a means of support to the municipal budgets,

For the purpose of setting out framework provisions for the implementation of a Pilot Program for the development stage of imposition of taxes on immovable property pending the establishment of comprehensive legislation governing such taxes in Kosovo,

Hereby promulgates the following:

Section 1
Definitions

For the purposes of the present regulation:

(a) "Immovable property" means land and buildings, installations, or structures on or below the surface of the land that are firmly connected to land. Immovable property shall include units within buildings, including, but not limited to, apartments or areas used for commercial activities;

(b) "Market value" means the price at which similar property of comparable characteristics is sold to an unrelated person in an arm's-length transaction;

(c) "Person" means any physical or legal person, public or private, including, but not limited to, personal business enterprises, partnerships and other business organizations, municipal and public authorities;

(d) "Pilot Program" means the development stage of imposition of property taxes by municipalities provided for under the present regulation;

(e) "Property" means immovable property;

(f) "Property tax" means a municipal tax on immovable property;

(g) "Tax rate" means the rate for property taxes levied pursuant to the present regulation;

(h) "Taxpayer" means the owner of the taxable property or, if the owner is not known or cannot be established or effectively located for the purposes of taxation, the user of the taxable property; and

(i) "Taxable property" means immovable property subject to property tax.

Section 2
General Provision

2.1 There shall be a Pilot Program for the development of municipal taxes on immovable property in Kosovo which shall commence on the date the present regulation enters into force and shall continue until 31 December 2002, unless otherwise determined in a subsequent regulation. The Pilot Program shall be carried out under the overall supervision of the Central Fiscal Authority (hereinafter "the CFA").

2.2 The CFA shall be responsible for the process of certification of municipalities for participation in the Pilot Program and their oversight in order to ensure proper administration of taxes on immovable property by the municipalities in accordance with the present regulation.

2.3 The CFA shall issue administrative instructions and provide guidance to the municipalities in connection with the certification of the municipalities for, and the implementation of, the Pilot Program.

Section 3
Criteria for Certification of Municipalities

3.1 In order to be certified for participation in the Pilot Program the municipalities shall:

(a) Identify properties which are to be included in the tax base, list the physical characteristics of such properties, and identify and properly describe properties which are to be excluded from the tax base, in accordance with procedures to be set out by the CFA;

(b) Select criteria to value properties included in the tax base pursuant to valuation methods specified in section 5.2;

(c) Set a tax rate which may differentiate between properties by categories depending on the use and location of the property. Such categories may include, but need not be limited to, agricultural, residential, commercial, and industrial properties, but in any event shall follow the categories established by the CFA;

(d) Establish administrative capacity necessary to carry out property information management, property valuation, billing, collection, administrative appeal, and enforcement functions. These shall *inter alia* include:

(i) Establishing support institutions for record maintenance, property valuation, billing, collection, enforcement, and non-judicial resolution of complaints by taxpayers;

(ii) Establishing a unified system to store and maintain information on immovable property, taxpayers, value of the property, tax rates, and history of tax billings and payments. Hard-copy and digital records containing such information shall be maintained in accordance with procedures to be set out by the CFA;

(iii) Establishing a system of fair and equitable valuation of taxable property; and

(iv) Setting property tax rates.

3.2 Municipalities which have satisfied all the requirements set out in section 3.1 shall be certified by the CFA to participate in the Pilot Program. The certified municipalities shall continue to comply with the certification requirements during the implementation of the Pilot Program.

Section 4
Responsibilities and Authority of Municipalities

Upon receiving certification, a municipality shall in close coordination with the CFA:

(a) Pass a municipal regulation regarding the imposition of property taxes in accordance with the present regulation;

(b) Send tax bills to taxpayers and ensure the collection of taxes; and

(c) Keep all the property taxes so collected for the use in the municipal budget, subject to the CFA rules and procedures relating to the Treasury functions.

Section 5
Tax Rate, Tax Base, Valuation and Sum of Tax Liability

5.1 The tax rate shall be determined by a municipality but shall not exceed two (2) percent of the tax base. The tax rate shall be applied in a non-discriminatory manner.

5.2 The tax base shall be the market value of immovable property. If sufficient market data are not available to establish market value, the market value may be established by reference to income generated by the property, cost of construction, area of the property or the number of rooms or offices.

5.3 In cases where the location of property affects its value significantly, the municipality may establish tax zones reflecting differences in property values. The tax zone in which a property is located may serve as a factor in establishing the property value.

5.4 The sum of tax liability shall be established through multiplying the tax base by the tax rate.

Section 6
Exemptions

6.1 Property owned and/or used by the United Nations or any of its organs including UNMIK, KFOR, international organizations, foreign governments, public authorities, public educational or scientific institutions, and places of public worship shall be exempt from property tax unless such property is used for a purpose that is not directly related to the declared purposes.

6.2 A municipality may establish that below a certain threshold of value, property will be exempt from taxation. The exemption shall be applied in a non-discriminatory manner.

6.3 No exemptions to individual taxpayers will be provided unless:

(a) The municipality establishes equitable and non-discriminatory rules, standards, and procedures for granting exemptions; and

(b) Exemptions are granted for a limited period not exceeding one (1) year in duration.

Section 7
Withdrawal of Certification

The CFA may withdraw certification that has been granted to a municipality if, at any time during the Pilot Program, the municipality fails to conform to the requirements set out in the present regulation and subsidiary instruments issued thereunder, and provided that a notice was served by the CFA to the municipality stating the nature of the failure and the municipality has not cured the failure within ninety (90) days of receiving the notice.

Section 8
Scope

The present regulation shall apply to private property and property of public/socially owned enterprises.

Section 9
Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 10
Applicable Law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

Section 11
Entry into Force

The present regulation shall enter into force on 29 September 2001.

Hans Haekkerup
Special Representative of the Secretary-General

REGULATION NO. 2001/24

AMENDING UNMIK REGULATION NO. 1999/20 ON THE BANKING AND PAYMENTS AUTHORITY OF KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

Having promulgated UNMIK Regulation No. 1999/20 of 15 November 1999 on the Banking and Payments Authority of Kosovo,

For the purpose of enhancing the authority of the Banking and Payments Authority of Kosovo with respect to the licensing, supervision and regulation of financial institutions in Kosovo,

Hereby amends UNMIK Regulation No. 1999/20.

Consequently, the regulation will have the following wording as of the date on which the present regulation enters into force:

REGULATION NO. 1999/20

ON THE BANKING AND PAYMENTS AUTHORITY OF KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in Kosovo,

For the purpose of strengthening the economy in Kosovo by providing for efficient and sound financial institutions and systems by establishing the Banking and Payments Authority of Kosovo,

Hereby promulgates the following:

GENERAL PROVISIONS

Section 1
Status of the Banking and Payments Authority of Kosovo

The Banking and Payments Authority of Kosovo (hereinafter "the BPK") is a distinct public legal entity.

Section 2
Definitions

Wherever used in the present regulation, the following terms shall have the following meanings:

"Bank" means a legal person engaged in the business of accepting deposits in Kosovo and using such funds either in whole or in part to make extensions of credit or investments for the account and at the risk of the person carrying on the business;

"Credit" means any direct or indirect commitment to disburse a sum of money in exchange for a right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, any extension of the due date of a debt, any debt payment guarantee issued, and any commitment to acquire a right to payment of a sum of money; the term "credit" shall not include bank deposits and the purchase of debt securities in the secondary market;

"Debt security" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, whether in certified or in book-entry form;

"Financial institution" means an organization such as a bank, insurance company, insurance intermediary or other person, offering one or more of the following financial services: deposit taking; offering insurance services to policyholders; extending credit; underwriting, dealing in, brokering or distributing securities; acting as an investment company manager or investment adviser; providing other financial services such as equipment leasing finance services, factoring, micro-finance services or foreign exchange; or other financial informational, advisory or transactional services;

"Guidelines" means non-obligatory recommendations or policy statements issued by BPK for the information of financial institutions and other parties concerned with BPK operations;

"Insurance company" means a legal person engaged in the provision of insurance services to policyholders;

"Insurance intermediary" means an insurance agent, sub-agent, or broker, whether or not it is formed as a corporation;

"International accounting standards" means the most recent international accounting standards issued by the International Accounting Standards Committee;

"Order" means an obligatory directive issued by the BPK in implementation of the present regulation;

"Reasonable fees" means fees that defray the direct and indirect costs that BPK incurs in providing the service or services for which the fee is charged; and

"Rule" means an obligatory directive issued by the BPK in implementation of the present regulation to all financial institutions.

Section 3
Capacity of the BPK

3.1 The BPK shall have the capacity to:

(a) Enter into contracts; and

(b) For the purpose of its business, acquire, hold, and dispose of property, whether movable or immovable.

3.2 The BPK may utilise and administer on behalf of the United Nations Interim Administration Mission in Kosovo ("UNMIK") property of the National Bank of Kosovo, headquartered at Marshall Tito Street in Pristina (now known as Mother Teresa Street), and of the Public Payments Service of Kosovo, headquartered at Lenin Street in Pristina.

Section 4
General Powers

4.1 The BPK shall exercise all powers specifically granted by the present regulation and other applicable law and such incidental powers as shall be reasonably necessary to carry out the powers so granted.

4.2 BPK shall enjoy operational and administrative autonomy, except as provided in the present regulation. No person shall seek improperly to influence any BPK Governing Board member or employee in the discharge of his or her duties or to interfere in the activities of the BPK.

Section 5
Principal Objectives

The principal objectives of the BPK are to:

(a) Foster an efficient and safe system for domestic payments; and

(b) Foster the liquidity, solvency and efficient functioning of a stable market-based financial system, including regulating banks, insurance companies and other financial institutions.

Section 6
Specific Powers

The BPK shall have the following specific powers:

(a) To recommend broad policy guidelines to the Special Representative of the Secretary-General in areas under its responsibility, under the guidance of the Deputy Special Representative for Economic Reconstruction and Development;

(b) To formulate and implement measures for, and supervise and regulate, payments and settlement systems for transactions in domestic and foreign currency in Kosovo;

(c) To own and operate one or more payments systems;

(d) To act as banker to the Central Fiscal Authority and to provide financial advice at its request;

(e) To act as fiscal agent of the Central Fiscal Authority;

(f) To hold foreign currency deposits of banks, the Central Fiscal Authority, and other entities;

(g) To ensure an adequate supply of bank notes and coins for the settlement of cash transactions;

(h) To maintain a depository for safe keeping of currency and securities;

(i) To license, supervise and regulate financial institutions;

(j) To supervise and regulate dealers in foreign exchange; and

(k) To conduct regular economic and monetary analysis of the Kosovo economy, make public the results, and submit proposals and measures to the UN Interim Administration in Kosovo on the basis of such analysis.

Section 7
Cooperation with UNMIK, UN Interim Administration in Kosovo

7.1 The BPK shall cooperate with UNMIK, the UN Interim Administration in Kosovo and its entities in pursuing its objectives.

7.2 The BPK shall provide general information as requested from time to time by the Central Fiscal Authority and other entities of the UN Interim Administration in Kosovo with respect to payments, banking and financial matters and they shall provide information to the BPK from time to time as the BPK may request concerning macroeconomic and financial matters.

Section 8
Technical Cooperation

8.1 The BPK may participate in meetings of international councils and organizations concerning technical aspects of payments systems, financial institution supervision and the other matters that are within its fields of competence.

8.2 The BPK may provide banking and payments services for the benefit of foreign governments, foreign banks and foreign monetary authorities and for public international organizations and other international institutions.

Section 9
Public Information

The BPK shall inform the public and the Central Fiscal Authority on a regular and timely basis of its analysis of macroeconomic and financial market developments and on related statistical information.

Section 10
Offices of the BPK

The head office of the BPK shall be in Pristina. The BPK may establish branches, liaison offices, and operations facilities in other locations in Kosovo as appropriate.

Section 11
Accounts

11.1 The BPK may open accounts on its books only on behalf of the Central Fiscal Authority and other entities of the UN Interim Administration in Kosovo, financial institutions lawfully operating in Kosovo, foreign banks, public international financial institutions, and donor organizations. The BPK may not open accounts for natural persons or enterprises.

11.2 All depository account liabilities of the BPK shall have corresponding assets as provided in section 48 below.

FINANCIAL PROVISIONS

Section 12
Capital

12.1 The authorised capital of the BPK shall be 5 million DEM. Thereafter, the capital and the General Reserve accounts shall be equivalent to five percent of the aggregate amount of the credit balances of all accounts maintained on the books of the BPK by account holders shown on the balance sheet of the BPK for the end of each financial year. The capital may be increased by such amounts as may be determined by the BPK and approved by the Special Representative of the Secretary-General. The BPK capital shall not be subject to encumbrance.

12.2 No reduction of capital shall be effected except by promulgation of a regulation by the Special Representative of the Secretary-General.

12.3 Whenever:

(a) On a monthly pro forma balance sheet of the BPK the value of its assets falls below the sum of its liabilities and its unimpaired authorised capital, or

(b) The net profit of the BPK for any financial year is insufficient to increase the capital and General Reserve accounts of the BPK to a level equivalent to five percent of the aggregate amount of the credit balances of all accounts maintained on the books of the BPK by account holders shown on the balance sheet of the BPK for the end of that financial year, the Central Fiscal Authority shall, within one month after publication of that balance sheet, use its best efforts within the available resources to make a capital contribution to the BPK in such amount or amounts as shall be necessary to remedy this deficit.

Section 13
Determination and Allocation of Income

13.1 For each financial year, the net income or the net loss of the BPK shall be calculated in accordance with international accounting standards.

13.2 Net income shall be allocated in each year to a General Reserve account until the capital and General Reserve accounts are equal to five percent of the aggregate amount of the credit balances of all accounts maintained on the books of the BPK by account holders shown on the balance sheet of the BPK for the end of each financial year.

13.3 Any balance of net income shall be transferred to the Central Fiscal Authority as revenue for the budget.

13.4 If there is a net loss, it shall be charged to the General Reserve account or to capital, in that order.

Section 14
Annual Budget

All proposed material expenditures of the BPK shall be reported in an annual budget to be approved by the Governing Board and submitted for information to the Central Fiscal Authority.

ORGANIZATION AND ADMINISTRATION

Section 15
Organization of the BPK

The BPK shall have a Governing Board, a management and a staff.

Section 16
The Governing Board

16.1 The Governing Board shall formulate policies for the operations of the BPK and supervise their implementation.

16.2 The staff of the BPK shall report, not less than ten times each year, to the Governing Board on the conduct of its operations and policies, on the soundness of the financial system, and on the state of the money, capital and foreign exchange markets, including all events and conditions that have or are expected to have a significant effect on the administration or operations of the BPK or on the conduct of its policies or on the financial system or on the before-mentioned markets.

Section 17
Powers of the Governing Board

The Governing Board shall have the following powers:

(a) To determine the policies for the execution of the powers of the BPK described in section 6 and to supervise their implementation by the management and staff;

(b) To adopt all rules, orders and guidelines issued by the BPK;

(c) To approve all reports and recommendations that the BPK makes to the UN Interim Administration in Kosovo;

(d) To make recommendations to the Special Representative of the Secretary-General on the BPK's participation in technical consultations with international organizations;

(e) To adopt the by-laws of the BPK;

(f) To determine the organization of the BPK;

(g) To approve the appointment of the Inspector General of the BPK;

(h) To establish and close branch offices and agencies of the BPK;

(i) To determine the budget of the BPK and the terms and conditions of employment of BPK employees, agents and correspondents;

(j) To determine the accounting policies of the BPK and to approve the periodic reports and financial statements of the BPK;

(k) To decide on the incurring of debt in material amounts by the BPK and the terms and conditions of such debt;

(l) To determine the categories of assets that shall be suitable for investment of the BPK's financial resources;

(m) To approve or deny applications for financial institution licences or registrations and to revoke financial institution licences or registrations; and

(n) To adopt internal structures, policies and procedures for licensing, registering, supervising and regulating financial institutions.

Section 18
Composition of the Governing Board

18.1 The Governing Board shall be composed of seven members appointed by the Special Representative of the Secretary-General: the Chairperson, the Managing Director, the Deputy Managing Director for Financial Institution Supervision and Regulation, the Deputy Managing Director for Payments Systems, and three other persons (two of whom shall be appointed from the UN Interim Administration in Kosovo).

18.2 Governing Board members must be persons of recognized integrity and professional experience in financial and banking matters.

18.3 The term of each member of the Governing Board shall be six years. Members of the Governing Board shall be eligible for reappointment.

Section 19
Compensation of Members of the Governing Board

The members of the Governing Board shall receive compensation from the BPK similar to that received by persons holding executive or non-executive positions with supervisory or managing boards, as the case may be, in large financial institutions in the region.

Section 20
Ineligibility to Serve on the Governing Board

No person shall serve on the Governing Board while he or she is an official or employee of a financial institution operating through offices in Kosovo or is a beneficial owner of five percent or more of an equity interest in a financial institution.

Section 21
Removal of Members of the Governing Board

21.1 Any member of the Governing Board shall be removed from the Board by the Board, or by the Special Representative of the Secretary-General if the Board fails to act, if he or she:

(a) Becomes ineligible to serve on the Governing Board pursuant to section 20;

(b) Has been convicted of an offence which carries a sentence of imprisonment without the option of a fine;

(c) Has been a debtor in a bankruptcy or insolvency proceeding;

(d) Has, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession; or

(e) Has been found by a majority of the members of the Governing Board to have engaged in illegal activity or serious misconduct in office.

21.2 In addition to the provisions of section 21.1, any member of the Governing Board may be removed from the Board, by the Board or by the Special Representative of the Secretary-General if the Board fails to act, upon a finding and recommendation by a majority of the members of the Governing Board that the member:

(a) Is unable to perform the functions of such office because of an infirmity of body or mind that has lasted for more than two months; or

(b) Has been absent from three consecutive meetings of the Governing Board without, in the opinion of the Governing Board, justifiable reason.

Section 22
Resignation

Members of the Governing Board may resign by giving not less than one month notice in writing to the Special Representative of the Secretary-General.

Section 23
Vacancy on the Governing Board

Any vacancy on the Governing Board shall be filled by the appointment of a new member of the Governing Board in accordance with section 18.

Section 24
Meetings of the Governing Board

24.1 The meetings of the Governing Board shall be chaired by the Chairperson of the Governing Board or, in his or her absence, by another member of the Governing Board.

24.2 The Governing Board shall meet as often as the business of the BPK may require but not less frequently than once each calendar month.

24.3 Meetings of the Governing Board are convened by the Managing Director; they may also be convened at the written request of any two members of the Governing Board.

24.4 Governing Board meetings shall be convened by communicating the time, venue and agenda of the meeting to all members of the Governing Board at least five working days before the date set for the meeting; in the event of an emergency, meetings may be so convened at shorter notice.

24.5 Each member of the Governing Board shall have one vote. In the event of a tied vote, the Chairperson shall cast a tie-breaking vote.

24.6 A quorum for the conduct of business at any meeting of the Governing Board shall consist of five members of the Governing Board.

24.7 Except as otherwise provided by the present regulation, decisions of the Governing Board shall be adopted by a simple majority of those present and voting; however, the by-laws of the BPK may permit meetings and voting by teleconferencing or, in exceptional circumstances, by tested telex or other tested electronic means of communication.

24.8 Subject to the quorum requirement of section 24.6, no act or proceeding of the Governing Board shall be invalidated merely by reason of the existence of a vacancy or vacancies on the Governing Board.

24.9 All acts done by a person acting in good faith as member of the Governing Board shall be valid notwithstanding that some defect in that person's appointment, eligibility or qualification is afterwards discovered.

Section 25
Proceedings of Governing Board Meetings

25.1 The proceedings of the meetings of the Governing Board shall be confidential. The Governing Board may decide to make the outcome of its deliberations on any matter public and shall publish promptly its decisions on general policy matters.

25.2 Minutes of each Governing Board meeting shall be signed by the Chairperson or the presiding officer and by the Secretary of the Governing Board.

25.3 The Secretary of the Governing Board shall be appointed by the Managing Director from among the senior staff of the BPK to attend all Board meetings and keep all BPK records and execute such other functions as described in the BPK by-laws. The Secretary shall not be a member of the Governing Board.

Section 26
Disclosure by Members of the Governing Board; Fiduciary Duties

26.1 Members of the Governing Board shall periodically disclose to the Governing Board in full their significant financial interests which they or members of their household may

directly or indirectly possess; such disclosures shall comply with guidelines adopted by the Governing Board.

26.2 Whenever any matter related to such interest is before the Governing Board, the member concerned shall disclose his interest at the beginning of the discussion and shall not participate in the discussion and decision on such matter; however, his or her presence shall be counted for the purpose of constituting a quorum.

26.3 Governing Board members and employees of the BPK have a fiduciary duty to the BPK and to the BPK's customers to place the BPK's interests and its customers' interests before their own pecuniary interest.

Section 27
Composition of the Management of the BPK

The management of the BPK shall consist of the Managing Director, the Deputy Managing Director for Financial Institution Supervision and the Deputy Managing Director for Payments Systems.

Section 28
Subsequent Service

Former members of the Governing Board shall not serve in a professional capacity in a financial institution doing business in Kosovo during a period of one year immediately following their departure from the BPK.

Section 29
Management of the BPK

29.1 The Managing Director shall serve as the chief executive officer of the BPK in charge of the day-to-day business of the BPK. If the Managing Director is absent or otherwise unable to act, the Deputy Managing Director of Financial Institution Supervision or, in his absence, the Deputy Managing Director for Payments Systems, shall act as chief executive officer of the BPK.

29.2 The Managing Director shall be responsible to the Governing Board for the execution of its decisions and for the direction and control of the administration and operations of the BPK.

29.3 All powers that are not specifically reserved for the Governing Board shall be vested in the Managing Director. Within the limitations of his powers, the Managing Director shall have the authority to take all actions required or deemed advisable for the administration or operations of the BPK, including without limitation entering into contractual commitments on behalf of the BPK, appointing the employees, agents and correspondents of the BPK, and generally representing the BPK. The Managing Director may, with the approval of the Governing Board, delegate some of his or her powers to other employees of the BPK.

29.4 The Deputy Managing Director for Financial Institution Supervision shall be responsible to the Managing Director. Notwithstanding section 17, the Deputy Managing

Director for Financial Institution Supervision shall have the authority to take enforcement measures, including ordering any financial institution to take remedial actions, appointing a receiver for a financial institution, or imposing penalties provided in this regulation or other applicable laws or regulations on licensing, supervision, and regulation of financial institutions.

29.5 The Deputy Managing Director for Payments Systems shall be responsible to the Managing Director.

Section 30
Inspector General of the BPK

30.1 The Inspector General of the BPK shall be appointed by the Managing Director with the approval of the Governing Board. The Inspector General shall be a person who has qualifications which make him or her eligible to serve on the Board.

30.2 The Inspector General may resign from office on giving not less than two months notice to the Managing Director. The Inspector General shall be removed from office only by a decision of the Special Representative of the Secretary-General or the Governing Board that is supported by one or more of the grounds of removal specified in section 21.

30.3 The duties of the Inspector General shall include:

(a) Evaluating the quality of existing and proposed management and financial control systems;

(b) Testing the operation of those systems and the reliability and integrity of information and transactions generated;

(c) Testing the adequacy of controls for safeguarding the assets of the BPK and, when appropriate, verifying the existence of assets;

(d) Testing compliance with laws, regulations, administrative directions, rules, orders and policies governing the BPK's operations;

(e) Conducting reviews of the effective and efficient use of the BPK's resources and making appropriate recommendations to management; and

(f) Performing special reviews when requested by management and liaising with the auditors of BPK.

Section 31
Staff of the BPK

31.1 Staff of the BPK shall not be employed by any person other than the BPK, unless the Governing Board shall otherwise decide.

31.2 The Governing Board shall adopt the terms and conditions of employment that shall include provisions to preclude conflicts of interest.

Section 32
BPK Employees, Agents and Correspondents

32.1 The Managing Director shall appoint and terminate the appointment of the employees, agents and correspondents of the BPK, within the limits and in accordance with the general terms and conditions of employment adopted by the Governing Board.

32.2 No salary, fee, wage, or other remuneration or allowance paid by the BPK shall be computed by reference to the net income, net profits or other revenues of the BPK.

Section 33
Conflict of Interest

33.1 The Management and Inspector General shall devote the whole of their professional services to the BPK, and shall not occupy any other office or employment, whether remunerated or not, except as nominee of the BPK and for occasional educational and civic endeavors.

33.2 No member of the Governing Board or staff of the BPK shall accept any gift or credit, or on behalf of any person with whom he or she has family, business, or financial connections, if the acceptance thereof would result, or give the appearance of resulting, in a diminishment of impartial devotion to his or her duties to the BPK.

Section 34
Secrecy

34.1 No person who serves or has served as a member of the Governing Board or staff or as an auditor, agent or correspondent of the BPK shall, in a manner unauthorised by the present regulation permit access to, disclose or publicise nonpublic material information which he has obtained in the performance of his BPK duties or use such information, or allow such information to be used, for personal gain.

34.2 Notwithstanding section 34.1, such persons may disclose nonpublic material information outside the BPK, in accordance with procedures established by the BPK, but only if:

(a) In accordance with the express or implied consent of the person about whom the information relates;

(b) In performance of a duty to the public to make disclosure, including to aid law enforcement and on the order of a court or other person of competent authority;

(c) Given to the auditors of the BPK;

(d) Given to financial institution supervisory authorities and staff of public international financial institutions in performance of their official duties; or

(e) The interest of the BPK itself in legal proceedings requires disclosure.

RELATIONS WITH ENTITIES OF THE UN INTERIM ADMINISTRATION IN KOSOVO

Section 35
Banker, Financial Adviser, Fiscal Agent

35.1 The BPK shall act as banker and as adviser to, and as fiscal agent of, the Central Fiscal Authority and other entities of the UN Interim Administration in Kosovo provided, however, that no transaction carried out by the BPK may serve to extend credit to or for the benefit of any public authority or any other physical or legal entity.

35.2 The BPK shall have the duty to render advice to the UN Interim Administration in Kosovo on significant financial matters that relate to BPK objectives or that otherwise are within its fields of competence.

35.3 The BPK shall be consulted by the Central Fiscal Authority on the occasion of the preparation of the budget.

Section 36
Depository and Cashier

The BPK may accept deposits, in any currency, from the UN Interim Administration in Kosovo, the Central Fiscal Authority, and other of its entities. As depository, the BPK shall receive and disburse moneys and keep account thereof and provide other financial services related thereto. The BPK shall pay to the limits of the deposited amounts against payment orders concerning such accounts. The BPK shall pay interest on such deposits at market rates after deduction of reasonable fees.

Section 37
Fiscal Agency Function

The BPK may, on such terms and conditions as it shall agree with the Central Fiscal Authority, act as fiscal agent for the account of the Central Fiscal Authority and such of its agencies and instrumentalities as UN Interim Administration in Kosovo may determine.

Section 38
Information to be Provided to the BPK

The BPK shall receive from the Central Fiscal Authority and other entities of the UN Interim Administration in Kosovo all such financial and economic information and documents as the BPK shall request for the carrying out of its functions.

RELATIONS WITH FINANCIAL INSTITUTIONS AND PAYMENT SYSTEMS FUNCTIONS

Section 39
Payments, Clearing and Settlement Facilities

The BPK may organize, own, operate, supervise and regulate systems for payment orders and for clearance and settlement of interbank payments, in currencies it determines, whether or not legal tender, including payments by check and other payment instruments, and shall establish such procedures and issue such rules and orders relating thereto as it shall deem appropriate.

Section 40
Banks' Accounts on BPK Books

Each bank operating in Kosovo that wishes to participate in a payment, clearing, or settlement system shall open and maintain an account on the books of the BPK, on such terms and conditions as the BPK shall specify, and shall provide promptly as required to the BPK such information concerning its operations and financial condition as the BPK shall prescribe by rule.

Section 41
Information Network

The BPK may establish and maintain an information network for the financial system of Kosovo.

Section 42
Financial Institution Supervision and Regulation

The BPK shall be exclusively responsible for the licensing of financial institutions in Kosovo and for their supervision and regulation and shall be empowered:

(a) To issue such rules, orders and guidelines and to take such other actions, including revoking licences of financial institutions and assuming control of a failed financial institution as it shall deem necessary or advisable, in order to execute its powers and responsibilities under the present regulation and other applicable laws;

(b) To cause an inspection to be made, by any of its officers or by any other qualified person appointed to that effect, of any financial institution and to examine its books, records, documents and accounts for the purpose of ascertaining the condition of its affairs and whether it is in compliance with the present regulation, or any rule or order and other applicable law on licensing and supervision of financial institutions;

(c) To require a director, officer or employee of a financial institution to furnish to the BPK such information as requested for the purpose of enabling the BPK to supervise and regulate financial institutions; and

(d) To cause any financial institution to take remedial actions or to impose penalties provided in the present regulation or any rule or order or other applicable law on licensing and supervision of financial institutions if there has been an infraction by a financial institution or by one or more of its officers or directors with respect to the present regulation or any rule or order or other applicable law or a directive of the BPK pursuant thereto, or the violation of any condition or restriction attached to an authorisation or approval issued to a financial institution by the BPK, or the violation of any rule or order issued by the BPK.

Section 43
Prudential Rules and Orders

43.1 Each financial institution shall comply with the rules and orders of the BPK concerning: its balance sheet accounts, off-balance-sheet commitments, and income and expense statement items with respect to ratios among accounts or items and prohibitions, restrictions or conditions concerning specific types or forms of credit or investments, or of credit or investments that exceed a certain amount or forms of commitments of a risk-bearing nature or matching as to maturity of assets and liabilities and off-balance-sheet items or open foreign currency, swap, option or similar positions or access to the payments system.

43.2 Financial institutions that engage in similar activities and that are in comparable financial condition shall be subject to similar rules and orders.

Section 44
Submission of Information to the BPK

44.1 Financial institutions shall furnish to the BPK such information concerning their operations and financial condition as the BPK may require.

44.2 The BPK may publish such information and data in whole or in part in aggregate form for classes of financial institutions determined in accordance with the nature of their business.

FOREIGN EXCHANGE REGULATION AND OPERATIONS

Section 45
Foreign Exchange Dealers

The BPK shall have the power to:

(a) Issue rules and orders governing foreign exchange transactions of individuals, non-financial enterprises, financial institutions, and agencies and instrumentalities established under the applicable law in Kosovo;

(b) Supervise and regulate foreign exchange dealers, including banks;

(c) Set limits on foreign exchange positions of foreign exchange dealers, including banks; and

(d) Establish the method for determining the value of currencies in relation to other currencies.

Section 46
Reporting of Foreign Exchange Transactions

Licensed foreign exchange dealers, including banks, may be required by the BPK to report periodically to the BPK on their operations, including their open foreign exchange positions, on a currency-by-currency basis; the BPK shall prescribe the reporting forms and supporting documents to be submitted.

Section 47
Dealing in Foreign Exchange

The BPK may:

(a) Buy, sell, or deal in gold coins or bullion or other precious metals;

(b) Buy, sell, or deal in foreign exchange, using for these purposes assets described in section 48; and

(c) Determine the rate at which it will buy, sell or deal in foreign currencies.

Section 48
Foreign Exchange Assets

48.1 The BPK shall hold on its balance sheet and manage assets denominated in foreign exchange consisting of any or all of the following assets:

(a) Gold;

(b) Foreign exchange in the form of notes and coins held within Kosovo or bank balances held abroad in foreign currencies in banks whose short term liabilities are rated in one of the two highest categories by internationally recognized credit rating agencies; and

(c) Debt securities issued or guaranteed by States or central banks of the European Union maturing within 180 days that are denominated and payable in Euros.

48.2 The primary objectives in selecting foreign exchange assets shall be safety of principal and liquidity. Subject to these objectives, such assets shall be selected to maximize earnings.

Section 49
Clearing and Payments Agreements

The BPK may, either for its own account or for the account and by order of the Central Fiscal Authority, enter into clearing and payments agreements or any other contracts for the same purpose with public and private central clearing institutions domiciled abroad.

CURRENCY MANAGEMENT

Section 50
Currency Safekeeping

The BPK shall provide, upon payment of reasonable fees, custodial facilities to financial institutions and the public at large for banknotes and coins in currencies that it determines.

Section 51
Currency Reserve Inventory

The BPK shall administer a currency reserve inventory in such currencies as it deems appropriate for the settlement of domestic and international transactions to ensure the regular supply of currency to meet the requirements of the economy of Kosovo and may charge reasonable fees for this service.

FINANCIAL STATEMENTS, AUDIT, AND REPORTS

Section 52
Financial Year of the BPK

The financial year of the BPK shall begin on the first day of January and end on the last day of December.

Section 53
Accounting Practices

53.1 The BPK shall maintain accounts and records in accordance with international accounting standards to reflect its operations and financial condition.

53.2 The financial statements of the BPK shall include separate accounts for a General Reserve; provisions for bad and doubtful debts; and depreciation in assets.

Section 54
Financial Statements

The BPK shall prepare financial statements for each of its financial years. They shall include a balance sheet, a profit and loss statement, and related statements.

Section 55
Independent Audit of BPK Accounts

The accounts, records, and financial statements of the BPK shall be audited by internationally recognized independent auditors recommended by the Governing Board and approved by the Special Representative of the Secretary-General. The Special Representative of the Secretary-General may dismiss the BPK independent auditors for good cause.

Section 56
Transmittal and Publication of Statements and Reports

56.1 The BPK shall, within four months after the close of each of its financial year, submit to the Special Representative of the Secretary-General:

(a) Financial statements certified by its external auditors;

(b) A report of its operations and affairs during that year; and

(c) A report on the state of the economy.

56.2 The BPK shall prepare, as soon as possible after the last working day of each calendar quarter, but in any event within 15 working days, summary financial statements as of the end of that quarter.

56.3 Upon their completion, the BPK shall publish the financial statements and reports described in sections 56.1 and 56.2; the BPK may publish such other reports and studies on financial and economic matters as it may deem appropriate.

MISCELLANEOUS PROVISIONS

Section 57
Consultations on Regulatory Proposals

The BPK shall be consulted by the UN Interim Administration in Kosovo on any proposals with respect to matters that relate to BPK's objectives or that otherwise are within its fields of competence, before they are finalized.

Section 58
Preferential Right of the BPK

58.1 The BPK shall have an unconditional preferential right to satisfy each of its claims from any cash balances and other assets that it holds for its own account or for the account of the debtor concerned, whether as collateral to secure its claims or otherwise, at the time that such claim becomes due and payable.

58.2 The BPK may exercise its preferential right only by keeping cash balances and by selling other assets against a reasonable price and paying itself from the proceeds of the sale after deducting therefrom the costs associated with the sale. No court action shall be required

for, and no competing claim shall be permitted to delay, the exercise by the BPK of its preferential right in accordance with the provisions of this section, not even claims of ownership or other previously acquired rights, unless there shall be clear and convincing evidence that staff of the BPK knew or should be considered to have known at the time that the assets came into the possession of the BPK that the assets did not belong to the debtor concerned.

Section 59
Prohibited Activities of the BPK

59.1 Except as otherwise specifically authorised by the present regulation or any subsequent regulation or administrative direction, the BPK shall not:

(a) Grant any credit, maintain any deposit, or make any monetary or financial gift;

(b) Engage in commerce, purchase the shares of any corporation or company, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other undertaking; or

(c) Acquire by purchase, lease, or otherwise any real rights in or to immovable property, except as it shall consider necessary or expedient for the provision of premises for the conduct of its administration and operations or for the housing of its employees or similar requirements incidental to the performance of its functions under the provisions of the present regulation.

59.2 Notwithstanding any other provision of the present regulation, the BPK may:

(a) Make loans to, or have an ownership share or otherwise participate in, any organization that is engaged in activities that are required for the proper discharge of the BPK's own functions or responsibilities;

(b) Acquire, in the course of satisfaction of debts due to it, any interests or rights referred to in section 59.1(b); provided that all such interests or rights so acquired shall be disposed of at the earliest suitable opportunity; or

(c) Grant credit to any of its employees for such purposes, in such amounts and on such terms and conditions as it may determine; provided, however, that its capital accounts shall be reduced by the amounts of such credit.

Section 60
Collection of Statistical Information

60.1 The BPK shall collect the statistical information required for the achievement of its objectives and the carrying out of its tasks and may engage in technical cooperation to this end with competent authorities from outside Kosovo.

60.2 The BPK shall define the statistical information so required and the form in which such information is to be provided to the BPK, the persons that are to provide such information to the BPK, and the confidentiality regime that shall apply to statistical information provided to the BPK.

60.3 The BPK shall contribute to the harmonisation of rules and practices governing the collection, compilation and distribution of statistics within its fields of competence.

Section 61
Immunity of the BPK from Taxation

The BPK, its assets, property and income, and its operations and transactions, shall be exempt from all income, property, excise and capital gains taxes and duties.

Section 62
BPK Regulatory and Inspection Powers

62.1 The BPK shall be empowered to issue such rules, orders or guidelines to visit such offices of financial institutions, to examine such accounts, books, documents and other records, and to take such other action as the BPK shall deem necessary or advisable to give effect to the provisions of the present regulation.

62.2 All rules, orders and guidelines issued by the BPK that apply to more than one financial institution shall be published and shall take effect on the date of such publication or on such later date as such directive or guideline shall specify. The BPK shall maintain a public register of such rules, orders and guidelines.

62.3 Rules and orders of the BPK shall be final determinations in administrative proceedings.

Section 63
Standards of Good Administration

63.1 The BPK shall use the powers given it under the present regulation equitably and uniformly and in accordance with sound administrative practices. It shall refrain from using any such power to serve an objective for which the power was not given or in excess of what shall be required to achieve the objective for which the power was given.

63.2 The decisions of the BPK taken pursuant to the present regulation shall be impartial and shall be motivated only by objective and rational considerations; they shall be executed with fairness and restraint.

Section 64
Trust Accounts

The BPK shall be authorised to open, and maintain on its books, accounts the assets and liabilities of which shall be segregated from the other assets and liabilities of the BPK. The assets of each such account shall be available only to meet liabilities of that account and no other assets of the BPK shall be available to meet liabilities of such account.

Section 65
Employment Practices

The BPK shall apply non-discriminatory personnel policies to ensure that the composition of the staff of the BPK reflects the multi-ethnic character of the communities of Kosovo.

Section 66
Judicial Review

In any court or arbitration proceeding arising out of or in connection with the present regulation against the BPK or an officer, employee, or agent of the BPK:

(a) The sole question before the court or arbitration court in determining whether the defendant acted unlawfully shall be whether the defendant acted in an arbitrary or capricious manner in light of the facts and the law or rules, orders or guidelines at issue;

(b) An administrator, employee, or agent of the BPK shall not be liable for damages or otherwise liable for acts or omissions performed pursuant to and in the course of the duties and responsibilities unless such acts or omissions constitute intentional wrongful conduct; and

(c) The action in question shall continue without restriction during the period of an appeal and any further appeal or other judicial proceedings related to the appeal.

Section 67
Implementation

The Special Representative of the Secretary-General may issue administrative directions for the implementation of the present regulation.

Section 68
Applicable Law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

Section 69
Transitional Provisions

69.1 Notwithstanding sections 11 and 12, until two years from the effective date of the present regulation or such earlier date when the BPK may determine that banks in Kosovo are equipped to provide such services, the BPK may open demand deposit accounts on its books on behalf of natural persons and enterprises, in currencies it determines, whether or not legal tender, receive and disburse moneys and keep account thereof, and provide payments and collection services related thereto. The BPK shall pay to the limits of the deposited amounts against payment orders concerning such accounts. The BPK shall pay no interest on such deposits. Such accounts shall be subject to such further terms and conditions as the BPK shall specify, including the payment of reasonable fees. Such demand deposit accounts shall not be

taken into account for purposes of determining the amount of the capital and the General Reserve accounts in relation to the amount of the credit balances of all accounts maintained on the books of the BPK by account holders shown on the balance sheet of the BPK for the end of each financial year.

69.2 Thirty days from the effective date of the present regulation, no entity may conduct the business of a bank in Kosovo unless it has submitted an application to receive a licence to conduct the business of a bank from the BPK in accordance with the present regulation.

69.3 On the effective date of the present regulation, the authorities that conduct payments transactions and central banking activities in Kosovo shall cease to engage in activities that, in the judgment of the BPK, interfere with the conduct of its functions.

69.4 Compensation received, or the renouncement of such compensation, by members of the Governing Board in relation to their service to the BPK, other than as described in section 19, shall be disclosed in writing to the Special Representative of the Secretary-General.

Section 70
Entry into Force

The present regulation[1] as amended shall enter into force on 1 October 2001.

Hans Haekkerup
Special Representative of the Secretary-General

[1] The original regulation entered into force on 15 November 1999.